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Injured student's family can sue Court: No immunity for Wilbanks, board

LATEEF MUNGIN

The family of an elementary school student who was attacked by a hammer-wielding assailant has the right to sue officials of the Gwinnett school district, a state appeals court has ruled.

The Georgia Court of Appeals decision reversed a ruling made by a Gwinnett State Court judge who dismissed the case last year.

A jury should be allowed to determine if Gwinnett school system officials were negligent in the attack, Georgia Court of Appeals Judge Charles Mikell Jr. said in a ruling released Friday. The lawsuit, which names individual school officials and not the county system itself, is now likely headed to a jury trial.

The attack occurred in February 2002 when a delusional Chad Brent Hagaman wandered into Mountain Park Elementary School and attacked 10-year-old Anna Elisabeth Leake with a hammer.

Sandy and Alan Leake filed a lawsuit in 2004 on their daughter's behalf. That lawsuit named members of the Gwinnett school board and Superintendent J. Alvin Wilbanks as well as staffers at Mountain Park Elementary. The lawsuit alleged that the school was not adequately secure and that staffers had not prepared a safety plan before the assault.

Gwinnett State Court Judge Robert Mock dismissed the case last year, ruling that Gwinnett school officials had official immunity that prevents them from being sued.

The appeals court ruled that the Mountain Park principal and other staff members at the school are protected. But Wilbanks and members of the Gwinnett school board were not protected by immunity because they had failed to develop a safety plan for the school, the court said.

"There is no evidence that the Superintendent and the board members have fulfilled their legislative mandate to prepare a safety plan," Mikell wrote. "The absence of such a plan from the record in this case necessitates reversal of the trial court's order."

Even though the school system itself is not named in the lawsuit, it will be liable for any damages if the Leakes win, said their attorney, Don Keenan.

"We are pleased that the Court of Appeals . . . affirmed that the principal and school staff should not be held liable," said Sloan Roach, spokeswoman for the school system. "We are hopeful that as the case moves forward that official immunity will be extended to the school board and superintendent."

Keenan, the family's attorney, said he was pleased with the court's decision.

"This is a significant victory for the children of Georgia," Keenan said. "The ruling says that schools have to create a safety plan. If there had been a safety plan in place, Elizabeth would have never been hurt."

According to court documents, Hagaman, 33, a paranoid schizophrenic who said he heard voices telling him to kill people, entered the school through its front doors. He walked past the principal's office about 150 feet to where a row of

fourth-graders were lined up in a hallway. When he reached Anna, he swung the hammer, embedding its claw portion into her skull, said the court documents.

The lawsuit says Anna suffered permanent damage and still has trouble understanding things she sees and hears.

Hagaman was arrested and charged with multiple offenses, including aggravated battery, cruelty to children and carrying weapons on school property. A Gwinnett Superior Court judge recently ruled that Hagaman was not mentally competent to stand trial. He is being held in a state mental institution.

- A version of this article may appear in today's Metro section.

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